

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

BLUE SPIKE, LLC

Plaintiff

v.

VERIMATRIX,

Defendant

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2:16-cv-00329-RWS
LEAD CASE

BLUE SPIKE, LLC.

Plaintiff

v.

MEDIA SCIENCE INCORPORATED,

Defendant

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2:16-CV-0701-RWS
MEMBER CASE

**MEDIA SCIENCE INCORPORATED’S NOTICE OF SUPPLEMENTAL AUTHORITY
WITH RESPECT TO CLAIM CONSTRUCTION**

Currently pending before the Court are the parties’ claim construction submissions. On Friday, June 23, 2017, the Court heard oral argument on issues relating to those submissions.

At the claim construction hearing during argument on the limitation “wherein said separate keys are selected from a group comprising: a random key; a candidate key; a pseudo-random key; a watermark key; a watermarking key; a private key; a public key; a semiprivate key; a master framework key; and, a digital watermark key” (‘213 Patent claim 36), the Court asked counsel if there is any authority on the issue of “Markush group” claim limitations. Neither plaintiff’s nor defendant’s counsel provided such authority at oral argument.

Having continued to consider the Court's question, defendant MSI submits the following (non-binding) authority for the Court's consideration: Manual of Patent Examining Procedure § 2173.05(h), citing *Ex Parte Dotter*, 12 USPQ 382 (Bd. App. 1931).

Counsel for defendant provided counsel for plaintiff an opportunity to object to this Notice. Counsel for plaintiff did not do so.

Dated: July 3, 2017

Respectfully Submitted,

/s/ Harold L. Novick (w-permission)

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**ATTORNEYS FOR DEFENDANT
MEDIA SCIENCE, INC.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served on July 3, 2017, to Plaintiff's counsel of record via e-mail.

/s/ Guy N. Harrison

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such this document was served on all counsel.

/s/ Guy Harrison